

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

NGC INDUSTRIES, INC.¹

Employer

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 341, AFL-CIO

Petitioner

Case 6-RC-12414

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, NGC Industries, Inc., manufactures wallboard products for use in residential and commercial construction at its facility in Shippingport, Pennsylvania. The Petitioner, International Brotherhood of Teamsters, Local No. 341, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time production employees, including lead production employees, and warehouse employees, including lead warehouse employees, employed by the Employer at its Shippingport, Pennsylvania, facility; excluding maintenance employees,² the warehouse clerical employee, the quality control lab technician, production supervisors (team leaders), process engineer, managers, temporary summer employees, and all office clerical employees and guards,

¹ The name of the Employer appears as amended at the hearing.

² Although the Petitioner did not specifically request that the unit description list maintenance employees as one of the excluded groups of employees, it is clear from the record that the Petitioner takes the position that maintenance employees should be excluded from the unit.

professional employees and other supervisors as defined in the Act. A hearing officer of the Board held a hearing and the Employer filed a timely brief with me.³

While the Employer agrees with the Petitioner that all of the petitioned-for employees are properly included in the unit, it contends, contrary to the Petitioner, that the unit must also include those employees who perform maintenance functions, including the maintenance mechanics, lead maintenance mechanics, maintenance purchaser and the maintenance machinist. The Employer also contends that the petitioned-for unit must include in the unit the quality control lab technician, the warehouse clerical employee and the warehouse receiving person. The unit sought by the Petitioner has approximately 69 employees, while the unit the Employer contends is the smallest appropriate unit would include about 84 employees. There is no history of collective bargaining for any of the employees involved herein.

I have considered the evidence and the arguments presented by the parties on each of these issues. As discussed below, I have concluded that the employees in the unit petitioned-for herein constitute an appropriate unit for the purposes of collective bargaining, and that the record does not compel a finding that the maintenance department employees must be included in the unit. I have also concluded that the quality control lab technician and the warehouse clerical employee share a community of interest with the petitioned-for employees such that they should be included in the unit herein. Accordingly, I have directed an election in a unit that consists of approximately 71 employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusions on the issues.

³ At 6:48 p.m. on January 12, 2005, after the close of business on the date briefs were due, the Petitioner submitted, by facsimile transmission, a request for a one-day extension of the time for filing briefs along with its post hearing brief. Thus, the Petitioner did not request additional time to file its brief until after the deadline for the submission of briefs had passed. In these circumstances, and noting the absence of any extenuating circumstances warranting an extension of time for the filing of its brief, the Petitioner's brief must be rejected as untimely filed, and it has not been considered by the Regional Director.

I. OVERVIEW OF OPERATIONS

The Employer is headquartered in Charlotte, North Carolina. Solely involved in this proceeding is the Employer's facility in Shippingport, Pennsylvania, herein called the facility. The Employer began operations at the facility approximately 5½ years ago. The Employer produces a full line of wallboard products which are distributed from the plant throughout the United States by railcar and truck.

The Employer employs approximately 52 hourly production employees, 19 hourly warehouse employees and 12 hourly maintenance employees at the Shippingport facility. The facility is encompassed within a single building which is about 5/8 mile in length and 400 feet in width. The Employer's facility operates 24 hours per day, 7 days per week.

The overall operations of the Shippingport facility are the responsibility of Plant Manager Chuck Newell. Reporting to Newell are Production Manager Mark Young, Regional Quality Assurance Supervisor Deborah Haglan, Plant Administration Manager Kathleen Kocher and Plant Office Administrator II Lisa Hammon.

Production Manager Young oversees the Employer's production, maintenance and warehouse operations. Reporting to Young are Warehouse Manager Sue Landis who, together with a warehouse supervisor, is responsible for the immediate supervision of the warehouse employees, Maintenance Manager Kevin Robinson, who is responsible for the immediate supervision of the Maintenance Department employees, and four production supervisors, who are each responsible for the immediate supervision of a team of production employees.⁴

⁴ At the hearing, the parties stipulated, and I find, that the following individuals are supervisors within the meaning of Section 2(11) of the Act as they possess the authority to hire, fire, responsibly direct, assign or effectively recommend these actions: Plant Manager Newell, Production Manager Young, Warehouse Manager Landis, Maintenance Manager Robinson, Regional QA Supervisor Haglan and Production Supervisors Tim Sutter, Norman Ochs, Greg Gutierrez and Daniel Hoenig. Although warehouse supervisor Bill Gennaro is listed on the Employer's organizational chart under the same title as the production supervisors excluded by stipulation, it is unclear whether the parties intended to stipulate as to his supervisory status. However, the record is clear that the parties agree that he should be excluded from the unit found appropriate herein.

II. EMPLOYEES INVOLVED IN THE PRODUCTION PROCESS

A. Production Department

The Employer's production process begins at the dome area where synthetic gypsum is stored. The dome operator utilizes a wheel loader to feed gypsum into the feeders which carry the material to the mill.

The beginning of the production line is located outside the mill area and it appears that the line runs almost the length of the facility. The production line begins at the wet end/paper machine area, where dry additives and gypsum are mixed and paper is separated to produce the wallboard. The Employer's product continues down a board belt to the other end of the facility where the board is cut, flipped and sent back through a dryer to a "takeoff area" where finishing, cutting, taping and bundling of the wallboard is performed. The product is then stacked in a storage area until it is loaded for delivery.

The Employer's Production Department operates continuously with three eight-hour shifts. The shifts in this department run from 6:30 a.m. to 3 p.m., 2:30 p.m. to 11 p.m., and from 10:30 p.m. to 7 a.m. The production employees are divided into four teams which are designated as Team 1, Team 2, Team 3 and Team 4. Each team is headed by a production supervisor (team leader), all of whom the parties agree are statutory supervisors. The four teams are scheduled in 28-day turns such that they rotate shifts equally.⁵

There are 13 employees on each production team. As noted above, there is one dome operator and one mill operator who work to store and dry the synthetic gypsum. Working in the wet end/paper machine area is one employee in each of the job classifications of paper, process, edge and riser. A knife operator operates the knife to cut the wallboard. After the board is sent through the dryers, a panel operator, three bundlers and two lift operators work as a crew in the takeoff area. The bundlers bundle the board and stack the bundles into units.

⁵ The 28-day schedule requires production employees to work seven daylight shifts, followed by three days off; followed by seven night shifts, followed by two days off; followed by seven afternoon shifts and ending with two days off.

Three such units at a time are then put into lifts and are transported by the lift operators to the storage area.

B. The Warehouse Department

The warehouse employees work primarily in the storage area of the facility which is next to the takeoff area. Of the 19 employees working in the Warehouse Department, 17 perform both rail loading duties and truck loading functions.⁶ The other two employees perform clerical duties related to shipping and receiving.

The rail loading and truck loading functions are performed only on weekdays. Rail loading takes place on all three shifts, whereas truck loading is performed only on day and afternoon shift.⁷ Warehouse employees are scheduled to rotate shifts on a weekly basis.

According to Production Manager Young, warehouse employees work overtime in the Production Department on weekends. Apparently, many warehouse employees were first employed as production employees.

C. The Maintenance Department

Maintenance Manager Kevin Robinson oversees the Maintenance Department employees. The hourly employees working in the Maintenance Department are two lead mechanics, one machinist, one maintenance purchaser and eight maintenance mechanics. Robinson has primary responsibility for the discipline of maintenance employees and for their bi-annual performance evaluations⁸ and for maintaining time records for maintenance employees.

The two lead mechanics, the machinist and the maintenance purchaser work from 6:30 a.m. to 2:30 p.m. on weekdays. Five maintenance employees are also scheduled to work

⁶ The record establishes that these employees switch back and forth between rail loading and truck loading.

⁷ In the Warehouse Department, the daylight shift hours are from 6 a.m. to 2 p.m.; the afternoon shift hours are from 2 p.m. to 10 p.m.; and the night shift hours are from 10 p.m. to 6 a.m.

⁸ The record indicates that since Young became the Production Manager about one and one-half years ago, he reviews the performance evaluations before they are issued.

on dayshift on weekdays. On the afternoon and night shifts and on weekends, there is one maintenance mechanic on duty on each shift.

Inasmuch as Robinson does not work at night or on weekends,⁹ the shift mechanic on duty during the off shifts and on weekends is supervised on those shifts by the production supervisor on duty. Based on the evidence in the record, the extent of the supervision by the production supervisors on the off shifts appears to be rather limited. In this regard, Production Supervisor Tim Sutter testified that when his team works on nights and weekends, he is in charge of all employees at the facility, including the shift mechanic and any warehouse employees who are working. Although Sutter testified that he has the authority to discipline employees on nights and weekends,¹⁰ neither Sutter nor any other production supervisor has ever exercised such authority other than possibly reminding employees orally to wear eye protection or earplugs. Sutter further testified that if he ever had occasion to write up a maintenance or warehouse employee, he would take the write up to the employee's primary supervisor in the morning.

Production Manager Young testified that an oral reminder to a maintenance employee to wear safety equipment would likewise be reported to Maintenance Manager Robinson. If necessary, Robinson would be responsible to follow up with further action because Robinson would be in the position to know if a particular maintenance employee had to be repeatedly reminded to wear safety equipment. Young further testified that the immediate supervisors of hourly employees have the authority to recommend discipline. In the case of a recommendation to suspend or terminate an hourly employee, Young would consult with Plant Manager Newell as to such decisions.

⁹ The record establishes that Robinson generally works from 6 a.m. to 4 p.m.

¹⁰ According to Sutter, this authority includes the ability to send an employee home for a serious rule infraction, such as fighting. The record establishes that Sutter has never had to exercise this authority.

The two lead mechanics working on dayshift are assigned almost exclusively to repair and maintain production equipment in one of two production areas. Lead mechanic Terry Moore works in the dome and mill area. The other lead mechanic, referred to in the record as Ken, works in the knife and takeoff areas.

There are five other maintenance mechanics working on dayshift. Four of the five work, as assigned by Robinson, on plant projects or other work orders.¹¹ The fifth maintenance mechanic working on dayshift will be designated as the contact person (hereinafter referred to as the designated shift mechanic) for the shift who will respond to any call for maintenance assistance in the plant. All of the employees at the facility carry radios so the designated shift mechanic can be contacted by either a supervisor or by any hourly production or warehouse employee.

The designated shift mechanic begins his shift by meeting with the designated shift mechanic from the prior shift to discuss any maintenance issues going on in the plant. After this meeting, the designated shift mechanic visits the key production areas to talk with the lead operator and any other employees in the area to ascertain whether there are any new or anticipated equipment/maintenance problems. In the unlikely event that the designated shift mechanic receives no calls for maintenance assistance, he will perform preventative maintenance work during the shift.

The record establishes that an outside vendor handles the Employer's preventative maintenance program. Each week, preventative maintenance task sheets, called PM-30 sheets, are distributed to production and maintenance employees. It is undisputed that the task lists for production employees differ from the task lists for maintenance employees in that the preventative maintenance tasks to be performed by production employees are less involved than those to be performed by maintenance employees.

¹¹ These maintenance projects vary in duration. A recent maintenance project lasted one and one-half months and involved cutting back and pouring concrete bays in the warehouse.

The record establishes that production employees receive two sets of PM-30s. One set of tasks is to be performed when the machinery is running, and the other set of tasks is to be performed during periods of plant downtime.

Each week there are two periods of scheduled downtime, during which preventative maintenance and cleaning takes place at the plant. The Employer has decided that both periods of downtime will occur during the dayshift when more supervision is present, thereby providing improved coordination. One period of downtime lasts for four hours and the other lasts for two hours. During these periods, the warehouse employees continue performing their usual rail loading and truck loading functions.

The record indicates that the preventative maintenance performed by production employees is the lighter maintenance work involved in tending to their equipment; such as putting oil in the oil bowls, inspecting valves and inspecting and cleaning pulleys. Maintenance employees' preventative maintenance tasks are more involved. For instance, during scheduled downtime, the maintenance employees may tear down machinery, inspect it and put it back together. Maintenance employees also change the oil on the machinery, check amperage on the motors and perform splicing on belts. If the need to change a motor can be planned so that this task can be performed during a scheduled downtime, production employees will assist the maintenance employees by helping to lift the motor out of the machine and helping move it. Production employees also start and stop the machine for the maintenance mechanic and will tell the mechanic whether the machine is operating properly.¹²

Any welding and electrical wiring work at the facility is performed exclusively by maintenance employees.¹³ Maintenance employees are also called upon to change motors, gearboxes and bearings. As noted, the production employees will help with certain of these

¹² The record indicates that motors may cease functioning unexpectedly and will have to be dealt with at times other than during the scheduled downtimes.

¹³ The record indicates that almost all of the welding is performed in the maintenance shop. Welding can only be performed by maintenance employees because the Employer's fire prevention program requires that certain paperwork be completed for any employee who may perform welding work.

functions as directed by the maintenance employee to the extent that they will provide an extra pair of hands or are available to inspect the machine as directed by the maintenance employee.

The Employer does not require that maintenance employees have a degree, certification or license. The record establishes, however, that the Employer requires that outside applicants for maintenance positions have experience in maintenance work. When a maintenance vacancy becomes available at the facility, all production and warehouse employees can bid on the position. The Employer requires internal applicants to complete a training module and pass a computerized test.¹⁴ This enables the Employer to assess the extent of the bidders' mechanical knowledge.

Immediately prior to becoming one of the Employer's production supervisors, Tim Sutter was a maintenance employee. Sutter testified that he bid on a maintenance position from a production position. Sutter further testified that he completed the training module required by the Employer and that he had prior maintenance experience from a job in Florida. The record also reveals that one of the Employer's former maintenance employees had a technical degree. The record is unclear as to whether any of the other maintenance employees have taken courses or have degrees.¹⁵

The Employer does not require employees bidding on production or warehouse positions to take any tests; however, the Employer looks for experience when hiring for any position in the facility, including those positions in production and warehouse.

With respect to temporary interchange of employees, it is undisputed that production and warehouse employees never substitute for maintenance employees on a temporary basis. Overtime in the Production Department is available to production, warehouse and maintenance employees. Although the record contains evidence that warehouse employees work overtime in

¹⁴ The record reflects that the training module deals with such subjects as AC circuits and pumps.

¹⁵ In this regard, Production Manager Young testified that he did not believe any of the current maintenance employees possess degrees.

production, there is no evidence in the record establishing that maintenance employees work overtime in the Production Department.

The record establishes that since the plant began operation, there have been two permanent transfers of production employees to maintenance positions. In 2001, Terry Moore transferred from the Production Department to the Maintenance Department. Since then, Moore has worked as the lead maintenance mechanic in the mill and dome areas.¹⁶ As such, Moore works primarily with the mill operator. In late 2002, Tim Sutter, then the dry end lead operator, transferred to the Maintenance Department as a shift mechanic.¹⁷

There have been no maintenance employees who have transferred to production positions or warehouse positions since the plant began operations.

The record shows that, in general, during their shifts production employees work at their machines, warehouse employees are located in the storage/warehouse areas, and some maintenance employees move throughout the facility. The amount of interaction between Maintenance Department employees and the employees in the Production and Warehouse Departments differs depending on which function the Maintenance Department employee is performing.

On the dayshift, the maintenance machinist works primarily in the maintenance shop cutting or fabricating repair parts. There are no production or warehouse employees who work in this area. The record also indicates that, at times, the machinist works closely with Production Manager Young performing projects in the wet end, such as milling key parts used there. When this occurs, wet end production employees have contact with the machinist.

Also working on the dayshift are the five maintenance mechanics, four of whom work on projects throughout the facility. The record indicates that any preliminary fabrication work for

¹⁶ Moore maintains all of the moving equipment in the mill, dome and kiln areas of the plant.

¹⁷ After one and one-half years as a shift mechanic, Sutter was promoted to production supervisor (team leader) for Team 2.

projects takes place away from other employees for safety reasons but installation will take place in the plant. At such times, maintenance employees may be in the same area as production or warehouse employees.

The designated shift mechanic who will respond to all calls for maintenance assistance appears to have the most interaction with production and warehouse employees. This mechanic must find out the nature of the request for assistance and he will usually repair the problem in the presence of the production or warehouse employees. As noted, this employee visits the production areas for a status report shortly after beginning his shift.

The two lead mechanics, who work only on the dayshift, have regular daily contact with the operator working in the same area. These lead mechanics handle all problems with the moving equipment in their area.

Thus, it appears from the record that five of the eight maintenance employees on dayshift (the machinist and four maintenance employees assigned to work on projects) have a minimal amount of interaction with the production and warehouse employees unless an unexpected breakdown or other event occurs requiring the assistance of all the maintenance mechanics.

The maintenance purchaser, Dave Kuchinski, is responsible for purchasing all maintenance-related equipment and supplies. Kuchinski does not perform any maintenance work. Kuchinski works on a computer at his desk in the Maintenance Department area. The record establishes that Kuchinski does purchase materials for the production process as well. Although any employee can contact Kuchinski for purchases, at times he will clear such purchases with Young.

All hourly employees, whether production, warehouse or maintenance, receive identical benefits including paid holidays, paid vacation, 401(k) with company match, educational reimbursement, profit sharing, gain sharing, life insurance and short and long-term disability insurance. In addition, all hourly employees must attend the same orientation program and are subject to the same attendance policy and safety and health rules. Finally, the Employer has a

two-part safety incentive program, which includes safety shoe reimbursement up to \$65 for any employee, whether hourly or salaried, and a safety incentive bonus for every accident-free quarter.¹⁸

The record reflects that in 2004, a group of maintenance employees received a monetary President's Award¹⁹ for designing and installing a chain chopper. The President's Award Program involves rewarding an employee or group of employees for suggesting an improvement at the facility. If the suggestion is accepted, an award will be paid to the individuals involved. The 2004 President's Award was the first such award given at the Shippingport facility.

There is a difference in the wage rates of production and warehouse employees as compared to maintenance employees, which reflects the experience and greater skill level required of the maintenance employees hired by the Employer. The starting rates of both production and warehouse employees is \$16 per hour. The three-month and six-month full rate is \$16.50 and \$18.25, respectively. Production and warehouse leads' wage rate is \$19.25 per hour.

The starting rate for maintenance technicians is \$18.55 per hour. Their three-month and six-month full rate is \$19.55 and \$20.55, respectively. The maintenance lead is paid \$21.55 per hour. The maintenance buyer is paid \$20.55 per hour.

The hourly employees are not required to wear uniforms, but the Employer will provide uniform rental upon request. The record reflects that the uniform of maintenance employees who opt to rent a uniform is a different color than the uniform which can be rented by production employees.

¹⁸ If the facility is accident free, the names of all hourly employees are entered into a drawing. Four names are drawn and each employee whose name is drawn receives a \$250 gift certificate or Visa card.

¹⁹ Young testified he was unsure whether the amount of the award was \$500 per employee.

The Maintenance Department is located in a two-story area at one end of the facility.²⁰ Located on the first floor of the two-story area are locker rooms, a first-aid room, a janitor's room and the maintenance shop.

The maintenance shop has lockers that are used only by maintenance employees. The record also indicates that the schedule for maintenance employees is posted in the shop. Also, a caged area is located in the maintenance shop where all of the maintenance tools are stored.²¹ Maintenance Manager Robinson and Process Engineer Dan Meade have offices in the maintenance shop.²² The maintenance purchaser's desk is located in an enclosed area of the maintenance shop. Also, next to the maintenance shop is a conference room that is sometimes used by maintenance employees for their break. The second floor of the two-story area holds another conference room, a break room and restrooms.

III. ANALYSIS OF COMMUNITY OF INTEREST FACTORS

The Petitioner seeks an election in a unit limited to the Employer's production and warehouse employees, excluding the maintenance employees. It is well established that a petitioned-for unit need only be an appropriate unit for collective bargaining, not the most appropriate unit. Omni International Hotel, 283 NLRB 475 (1987). In addition, the unit sought by the Petitioner is always a relevant consideration, and the Board first considers the appropriateness of the unit sought by the Petitioner. Overnite Transportation Co., 322 NLRB 723 (1996).²³

²⁰ The Maintenance Department is across from the mill area. Between the Maintenance Department and the mill area is the wet end, where the production line begins.

²¹ The caged area is used only by maintenance employees.

²² The parties stipulated that Process Engineer Meade should be excluded from the petitioned-for unit.

²³ It is true, as argued by the Employer in its brief, that a production and maintenance unit is a presumptively appropriate unit. Thus, if the Petitioner had requested that unit the burden would have been on the Employer to overcome the presumption. However, where a union requests a different unit, the presumption does not apply and the unit determination must be based on community of interest factors. See Allen Health Care Services, 332 NLRB 1308, 1309 (2000).

In the absence of a more comprehensive bargaining history, the Board has historically found a petitioned-for separate maintenance unit appropriate if the maintenance employees have a community of interest separate and distinct from other employees. Ore-Ida Foods, 313 NLRB 1016 (1994), citing American Cyanamid Co., 131 NLRB 909 (1961). This community of interest analysis applies to the instant case, where it must be determined whether the maintenance employees have a separate community of interest from the production and warehouse employees or whether, as argued by the Employer, the manufacturing operations are so functionally integrated as to mandate the inclusion of the maintenance employees in the requested unit.

“In determining whether a sufficient community of interest exists, the Board examines such factors as mutuality of interests, and wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” TDK Ferrites Corp., 342 NLRB No. 81 (Sept. 14, 2004) citing Yuengling Brewing Co. of Tampa, 333 NLRB 892 (2001), and Ore-Ida Foods, 313 NLRB 1016, 1019 (1994), enfd 66 F.3d 328 (7th Cir. 1995). No single factor has controlling weight and there are no per se rules to include or exclude any classifications of employees in any unit. Airco, Inc. 273 NLRB 348 (1984). This necessitates an examination on a case-by-case basis of the appropriateness of a separate production unit.

Based on the record, I have concluded that the petitioned-for unit of production and warehouse employees constitutes an appropriate unit, and that Board precedent does not compel the inclusion of the maintenance employees in this unit.

The maintenance employees are organized by the Employer into a separate department and have separate supervision. Although the one shift mechanic working on the off shifts and weekend shifts is overseen by the production supervisor on duty, the record contained little evidence as to the nature of this oversight. Although the Employer offered testimony that the production supervisors on the off shifts have the authority to discipline maintenance employees,

the record establishes that this has never occurred. In addition, it is clear that the shift mechanics respond to maintenance calls on the off shifts, and that they are not responsible for production work. Maintenance Manager Robinson maintains the time records for all Maintenance Department employees and Robinson completes their performance evaluation two times per year.²⁴

Production and warehouse employees earn between \$2.30 and \$3.05 per hour less than maintenance employees, and it is clear from the record that production and warehouse employees are less skilled than the maintenance employees. For this reason, production and warehouse employees do not fill in for maintenance employees. The Employer requires maintenance employees to have prior maintenance experience, and production and warehouse employees can bid on maintenance positions only if they complete the Employer's training module and pass a computerized test.

Although there have been two incidents of permanent transfer from production to maintenance in five and one-half years, there have been no instances of permanent transfer of maintenance employees to hourly production or warehouse positions.²⁵ In Lawson Mardon U.S.A., 332 NLRB 1282 (2000), the Board found a petitioned-for production unit, which included shipping and receiving employees, to be an appropriate unit as the evidence there was insufficient to compel the inclusion of the maintenance employees. As here, the maintenance employees were organized into a different department, had separate supervision, and the daily contact between employees was limited to production employees identifying machinery

²⁴ There is no evidence in the record that production supervisors have any input into the evaluations of maintenance employees.

²⁵ Although Sutter testified that he was called in on one occasion to perform dry end production work after he became a maintenance employee, there are no other instances of such assistance in the record. Thus, it appears that Sutter, who formerly worked as the dry end lead person immediately prior to transferring to the Maintenance Department, was in a unique position to assist when the Employer was shorthanded. The record establishes that Sutter assisted the Employer in this manner on an infrequent basis.

malfunctions which the maintenance employees repaired. The Board also noted that while the maintenance employees did not qualify as craft employees, they were expected to possess job-related experience and maintenance skills that the production employees lacked. A similar situation exists here as it is clear that while they are not craft employees, the maintenance department employees are more highly skilled than the production and warehouse employees. Indeed, the Employer requires that applicants for maintenance positions have prior maintenance experience and skills or, in the case of internal applicants, that they demonstrate aptitude and ability by undergoing training and testing at the facility.

In its brief, the Employer attempts to explain the reason for the fact that so few production or warehouse employees have transferred to maintenance positions. In this regard, the Employer admits that although it is available, very few production or warehouse employees take advantage of the training opportunity and test required for maintenance positions. The fact that only two employees, one of whom had prior maintenance experience, in 5 and one-half years, went through the training and testing in order to obtain a higher paying maintenance position²⁶ actually reinforces the conclusion that maintenance employees are required to possess aptitude and skills not required of production or warehouse employees.

In Lawson, supra, the Board ultimately concluded, as must be concluded here, that the community of interest factors were not so substantial as to mandate the inclusion of the maintenance employees in a production unit since the petitioning union need only seek an appropriate unit. Similarly, in Yuengling Brewing Co. of Tampa, supra, the Board reversed the regional director's finding that a production and maintenance unit was the only appropriate unit. There, the Board found that a separate unit composed of all maintenance employees was an appropriate unit. As here, the maintenance employees were more highly skilled than production

²⁶ I note that in recognition of their particular skills, the Employer pays maintenance employees, after they are employed for only three months, 30 cents more per hour than production or warehouse leads. After six months on the job, maintenance employees earn \$1.30 more per hour than production or warehouse leads and \$2.30 more per hour than full-rate production or warehouse employees.

employees and the maintenance employees were separately supervised. The Board noted the lack of permanent interchange and that there was little evidence of temporary interchange. As to the degree of interaction, the Board noted that almost half of the maintenance employees had minimal contact with production employees, except that two electricians spent most of their time on the production floor and had significant interaction with production employees.

In Yuengling, the Board also noted that while production employees performed some maintenance duties, the duties they performed were routine and required lesser skills. The Board said that this type of overlap and “lending a hand” does not require the inclusion of production employees in a maintenance unit since their work is unskilled and peripheral to the regular repair work performed by maintenance employees. See also, Ore-Ida Foods, 313 NLRB 1016, 1020 (1994); Capri Sun, 330 NLRB 1124 (2000). This principle applies here as production employees do perform some maintenance work in the course of their production duties. Thus, the PM-30 sheets which list maintenance tasks for production employees involve the lighter, less-skilled maintenance functions of checking and inspecting belts, pulleys and bearings, filling oil bowls and cleaning carts.

In recent cases in which the Board found, contrary to the desires of the petitioning union, that a unit of maintenance employees apart from production employees was not an appropriate unit, the facts showed a much closer relationship between the production and maintenance groups of employees than is present here. In TDK Ferrites, supra, unlike here, the maintenance department was not physically separated from the rest of the plant. In addition, one classification of the maintenance employees, called production technicians (which constituted more than half of the requested unit) operated production equipment on a daily basis. In addition, senior production operators occasionally replaced the production technicians when they were absent or on vacation. Maintenance employees were, by and large, hired from the ranks of production employees. Finally, the production supervisors evaluated and supervised 3 of the 4 groups of maintenance employees in the requested unit. In the instant

case, the maintenance employees do not operate production equipment except, on an infrequent basis, such as the few occasions when Sutter was called in or if there is a situation clearly on an emergency nature. Thus, according to the record, the maintenance employees do not regularly perform production work as part of their job.

In Buckhorn Inc., 343 NLRB No. 31 (Sept. 30, 2004), the Board found that the smallest appropriate unit was a combined production and maintenance unit. The Board relied on the fact that there was substantial evidence that the maintenance employees regularly performed production work. In that case, the setup maintenance employees (who comprised half of the department) worked with and performed the same work as the production employees during the mold change process. Also, maintenance employees regularly assisted employees in the shipping/receiving/warehouse area and employees from maintenance and production routinely relieved each other during breaks and could fill in for each other on certain steps of the manufacturing process. The Board also relied on evidence that there were a significant number of permanent transfers between production and maintenance and that 14 of the 19 employees were actually supervised by the production supervisor rather than the maintenance supervisor.

As noted, in this case, all of the maintenance employees are supervised Maintenance Manager Robinson. In addition, none of the maintenance employees regularly perform production work, and none of the production or warehouse employees ever fill in for maintenance employees. Moreover, the evidence of permanent transfer is rather insignificant as only two production employees have transferred to maintenance positions since the plant opened, and one of those employees had maintenance experience with a previous employer.

Contrary to the argument in the Employer's brief, the representation of the production and warehouse employees without the maintenance employees does not create a situation involving a splintered or fractured unit. In this regard, the Board will not find a fractured unit where, as here, the record evidences facts to establish that the petitioned-for unit has a sufficiently distinct community of interest from employees the petitioner does not seek to

represent. In Publix Super Markets, Inc., 343 NLRB No. 109 (December 16, 2004), a case cited by the Employer, the Board reversed the regional director's finding that the employees involved in the employer's fluid processing operations constituted an appropriate unit apart from employees in the distribution operation. The Board based its decision on the particular facts of that employer's operation which established substantial functional integration of the employer's operations, plant-wide interchange and plant-wide uniformity in terms and conditions of employment. The Board noted that the differences among the employees in the fluid processing unit and among the employees in the distribution unit were nearly as great as the differences between the two units.

The Employer also relies on Seaboard Marine, 327 NLRB 556 (1999), where the Board reversed a regional director's finding that a unit limited to 17 clerks was an appropriate unit. The Board found that the petitioned-for employees performed unskilled clerical and/or visual inspection tasks similar to those that employees in excluded classifications also performed. Therefore, the Board found that the petitioned-for clerks did not constitute a separate appropriate unit.²⁷

The instant facts, as set forth and discussed above, establish that the maintenance employees have a sufficiently distinct community of interest such that their inclusion in the petitioned-for unit need not be compelled contrary to the desires of the Petitioner. Accordingly, based on the above and the record as a whole, I shall exclude the maintenance employees from the unit in the election directed herein.²⁸

²⁷ The Board in Seaboard Marine expressly noted that the record was insufficient to determine whether the appropriate unit would have to include the maintenance employees.

²⁸ My finding that the employees in the Maintenance Department need not be included in the petitioned-for unit also applies to the maintenance buyer.

IV. OTHER ELIGIBILITY ISSUES

There remains for consideration the eligibility issues concerning the Quality Control lab technician, the warehouse clerical and the warehouse receiving employee. The Employer, contrary to the Petitioner, asserts that these positions should be included in any unit found appropriate herein based on community of interest factors.

A. Quality Control Lab Technician

The record reveals that the Quality Control lab technician is the only hourly employee in the Quality Control Department and is paid \$19.25 per hour, the same wage rate as is paid to the production and warehouse leadpersons. The Quality Control lab technician reports to Regional QA Supervisor Deborah Haglan. The Quality Control lab technician enjoys identical benefits and is subject to all of the same work rules, safety rules and incentive programs as all other hourly employees. There is no evidence in the record that that the Quality Control lab technician acquired any specialized training for the position. Rather, the current Quality Control lab technician bid into the position from an hourly production department position in the dry end.²⁹

The Quality Control lab technician works only weekdays. He begins his workday by attending a production team meeting along with the production employees. After the meeting, the Quality Control lab technician walks through the entire production line checking the wall board. He then reviews samples which were obtained throughout the night shift.³⁰ This work apparently takes place in the Quality Control lab area which is located near the wet end of the production line.

The Quality Control lab technician tests the samples to ensure the quality of the wall board. The lab technician tests every production specification for the Employer's product,

²⁹ The record indicates that since transferring to the Quality Control lab technician position about 3 and one-half years ago, the lab technician "quite often" works overtime in the production department in the paper classification in the wet end.

³⁰ The dry end lead working on the night shift obtains the samples each hour throughout that shift.

including edge angles, taper depth and moisture resistance. In case of an adverse outcome, the Quality Control lab technician consults with the lead employee in the area to correct the problem. To this end, the lab technician will review production documentation recorded by the lead operator. If the lab technician determines that the product from an earlier shift was defective, he will identify it to the warehouse and have it pulled. The record indicates, however, that usually this is unnecessary because the dry end production lead often identifies the problem during the shift and has the board pulled aside. The record indicates that the Quality Control lab technician interacts regularly with the dry end lead because the finished product is the primary product being dealt with by both of these employees.

In determining whether the Quality Control lab technician should be included in the unit, I note that neither party has contended that the lab technician is a technical employee. In this regard, I nevertheless find that he is lacking in the two requirements necessary to be found to be a technical employee. The Quality Control lab technician has no specialized technical training and does not appear to utilize independent judgment in his work. The record reveals that the major function of the Quality Control lab technician is to test products during the manufacturing process to determine if the product meets the specifications set up by the Employer. If a test reveals some abnormality, the Quality Control lab technician will consult with the production lead to determine the problem. The record is silent as to what procedure is followed if a problem cannot be routinely corrected.

In the instant case, the record establishes that the work performed by the Quality Control lab technician is highly integrated into the production process. The product samples move through the lab as a regular and routine part of the manufacturing process. The production employees and the Quality Control lab technician work in close proximity to each other, and communicate regularly regarding test results. The Quality Control lab technician has constant contact with the production workers, especially the dry end lead operator inasmuch as they both work primarily on the finished product. In addition, the record establishes that the Quality Control lab technician frequently works overtime as a production employee.

In this case, the record clearly establishes the Quality Control lab technician has a high degree of daily interaction with the production employees and that his work is functionally integrated in the production process. Because of these factors, and considering the record as a whole, I find that it would be inappropriate to exclude the Quality Control lab technician from the production and maintenance unit found appropriate herein. Accordingly, I shall include the Quality Control lab technician in the unit. See Blue Grass Industries, 287 NLRB 274, 276-277; 298-299 (1987); W.R. Grace & Co., 202 NLRB 788 (1973). Cf. Penn Color, 249 NLRB 1117 (1980).

B. Warehouse Clerk and Receiver

The warehouse clerk reports to Warehouse Manager Sue Landis.³¹ The warehouse clerk works from 8 a.m. to 4:30 p.m. on weekdays. Her primary functions are to prepare the load diagrams for the proper loading of trucks and handling all paperwork for each shipment. It appears that the truck loaders use the load diagrams in their work. The warehouse clerk also locates loads of dunnage³² for shipment to the facility. The warehouse clerk performs her function at a desk in the warehouse manager's office which is located next to the truck bay and which is close to the takeoff area of the production line. The warehouse clerk's work area, in close proximity to the truck bays, allows her to easily interact with the trucking firms utilized by the Employer.³³

The warehouse receiver, referred to in the record as a receiving person, handles the receipt of raw material, paper rolls and other miscellaneous materials used in the production process. The receiver works on weekdays from 6 a.m. to 2 p.m.

³¹ All warehouse employees who work on the daylight shift report to Landis.

³² Presumably, dunnage refers to protective packing material.

³³ The record indicates that the Employer utilizes two trucking firms.

In determining whether an employee should be considered office clerical or plant clerical, it must be determined whether the employee's functions are closely associated with the production process. Hamilton Halter Co., 270 NLRB 331 (1984). As the Board pointed out in Hamilton Halter, the line between plant clerical and office clerical is not always easily distinguishable. In this regard, the Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. Mitchellace, Inc., 314 NLRB 536 (1994). In determining whether an employee is a plant or office clerical, the Board has traditionally considered the location where the individual performs his or her work and the amount of time the employee spends performing other duties.

It appears from the record that the warehouse clerk spends her time working between the truck bays and her desk in the warehouse manager's office. The record establishes that the Employer has an administrative office area which is located at one end of the facility in an area of the building that juts out from the main structure. Based on the record, the warehouse clerk spends no time in the administrative office area. Rather all of her time is spent between the warehouse manager's office and the truck bays.

As noted above it further appears that the truck loaders utilize the load diagrams prepared by the warehouse clerk on a daily basis. Thus, the warehouse clerical's duties are integral to the functioning of the truck loading operation.

In light of the above and noting that the warehouse clerk's duties are integral to the warehouse process and that the warehouse clerk enjoys similar working conditions, shares common supervision and that she prepares the load diagrams utilized by the warehouse employees, I find that the warehouse clerk is a plant clerical employee who shares a community of interest with the production and warehouse employees. See Fleming Foods, 313 NLRB 948 (1994); Brown & Root, Inc., 314 NLRB 19, 25 (1994); Columbia Textile Services, Inc., 293

NLRB 1034, 1037-1038 (1989). Accordingly, I shall include the warehouse clerical in the unit found appropriate herein.³⁴

V. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees, including lead production employees, warehouse employees, including lead warehouse employees, the warehouse clerical employee, and the quality control lab technician employed by the Employer at its Shippingport, Pennsylvania, facility; excluding maintenance employees, production supervisors (team leaders), the process engineer, managers, temporary summer employees, and all office clerical employees and guards, professional employees and other supervisors as defined in the Act.

³⁴ I make no finding with respect to the inclusion or exclusion of the warehouse receiving employee inasmuch as the status of this employee was not litigated at the hearing. In this regard, I note that the Petitioner took no position as to this employee's status and the record contains very little information about the warehouse receiving employee's duties or his or her terms and conditions of employment. In these circumstances, I will permit the warehouse receiving employee to vote in the election directed herein, subject to challenge by a party.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local No. 341, AFL-CIO. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior

Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **February 11, 2005**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the

election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **February 18, 2005**. The request may **not** be filed by facsimile.

Dated: February 4, 2005

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

Classification Index

440-1760-0500
440-1760-0580
440-1760-1000
440-1760-1500
440-1760-2460